

Legal Update

NEW TAX BENEFITS FOR REGIONAL OPERATING HEADQUARTERS

In order to attract more foreign investment in the country, as proposed by the Ministry of Finance, the Cabinet on 2 June 2010 has approved to the draft Royal Decree in accordance with the reduction and exemption on income tax of the Regional Operating Headquarters ("ROH") and expatriate workers working for the ROH including the company or partnership holding share(s) in the ROH.

Certain tax benefits are summarized as follows:


1. Reduction on corporate income tax of the ROH to 10 percent of its net profit on the income earned for providing domestic services for 10 consecutive fiscal years;
2. Exemption on corporate income tax of the on the income earned for providing services to the companies outside Thailand 10 consecutive fiscal years;
3. Reduction of corporate income tax of the ROH from the rate of 30 percent of its net profit to the rate of 10 percent of its net profit for the following income:
 - (i) Income on royalty that the ROH receives from its foreign affiliated enterprises or branches, which this is only applicable to the amount of royalty derived from research and technology development of the ROH that are conducted in Thailand.
 - (ii) Interest income that the ROH receives from a loan that it makes to its foreign affiliated enterprises or branches, which this is only applicable to the interest from the amount of loan that the ROH has borrowed from other source to lend to its affiliated enterprises or branches;
4. Exemption on corporate income tax of the ROH for the dividend that the ROH receives from its affiliated enterprises or branches;
5. Exemption on corporate income tax of other enterprises which is established under the foreign law and not operating its business in Thailand, for dividend received from the profit of the ROH;
6. Reduction of withholding tax for personal income to expatriate workers working for ROH to be 15 percent for eight (8) consecutive years (the period is extended from four (4) to eight (8) consecutive years);
7. Exemption on personal income tax to expatriate workers for his/her income from employment which such income is received in foreign country due to his/her assignment to work in foreign country by the ROH.

Remark: The exact periods of the tax reduction and exemption in items 1, 2 and 6 above shall be in accordance with the provisions of the Royal Decree to be enacted later.

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 **EXTENSION ON TAX BENEFITS FOR
DEBT RESTRUCTURING OF NON-PERFORMING LOAN AND
CORPORATE RESTRUCTURING FOR PARTIAL BUSINESS TRANSFER**

According to the Cabinet's resolution on 22 December 2009 approving the extension of the tax benefits on debt restructuring and corporate restructuring for partial business transfer, the Royal Decrees issued in accordance with the Revenue Code in respect of the debt restructuring of Non-Performing Loan ("NPL") and the partial business transfer have been effective since 1 May 2010. Summary of significant provisions thereof are as follows:

Debt Restructuring of NPL

The debts entitling to obtain the tax benefits and privileges shall be restructured during 1 January 2010 to 31 December 2010 in accordance with the criteria of the debt restructuring of financial institute as prescribed by the Bank of Thailand.

Tax Exemption

- (1) Exemption of income tax to the debtors of either financial institute or non-financial institute creditors on the income received from the release of debts.
- (2) Exemption of income tax, value-added-tax ("VAT"), specific business tax ("SBT") and stamp duty to the debtors of either the financial institute or non-financial institute creditors and to such creditors on the income so received from transfer of assets, sale of goods or services and entering into any instruments due to the debt restructuring.
- (3) Exemption of income tax, VAT, SBT and stamp duty to the debtors of the financial institute creditors on the income so received from the transfer of mortgaged property to any other party that is not the debtor's financial institute creditor as well as the entering into any instruments due to the such transfer, provided that the debtors must utilize such proceeds for repaying loan to the financial institute creditor. The exemption shall apply only to the amount which is not exceeded the outstanding debt or the outstanding obligation on the debt security agreement with the financial institute creditors.

Corporate Restructuring for Partial Business Transfer

The exemption on VAT, SBT and stamp duty shall be applied for partial business transfer between a private limited company and/or a public limited company on tax bases, incomes or the entering into any instruments so incurred or arisen due to such partial business transfer, provided that the partial business transfer shall be made during 1 January 2010 to 31 December 2010.

The regulations, methods and conditions in relation to the debt restructuring of NPL and partial business transfer have not yet been announced by the Director-General of the Revenue Department.

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EXTENSION OF PROPERTY STIMULUS MEASURES

Due to the violent political unrest in Thailand affecting to the business sector and investment sentiment, the Cabinet on 25 May 2010 has approved the extension of the following stimulus measures for the immovable property transactions which will be ended on 31 May 2010 for another one month (i.e. until 30 June 2010):

1. Reduction of the registration fee for transfer and mortgage of immovable property (e.g. land, house, land including house or building etc.) in accordance with the Land Code to be 0.01 percent; and
2. Reduction of the registration fee for transfer and mortgage of condominium in accordance with Condominium Act to be 0.01 percent.

REMEDIAL MEASURES AGAINST THE IMPACT OF POLITICAL UNREST

The Cabinet on 25 May 2010 has approved the measures to relieve the impact of political unrest to the entrepreneurs and the workers as follows:

1. The jobless workers due to the unrest, who are members of the Social Security Fund (“**SSF**”), shall be entitled to receive Baht 7,500 per month per person for six months period in addition to normal compensation according to the Social Security Law. And the jobless workers, who are not SSF members, shall be entitled to receive Baht 7,500 per month per person.
2. The budget of Baht 417.3 million has been approved to support the large entrepreneurs for their payment of one-month-salary to their workers; and
3. Small entrepreneurs that have been affected by the said unrest are entitled to receive Baht 50,000 each.

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TAX MEASURES TO STIMULATE THE DOMESTIC TOURISM INDUSTRY

The Cabinet has approved the following tax measures for stimulating the domestic tourism industry due to the recent political unrest on 8 and 15 June 2010:

1. The company or registered partnership attending a trade exhibition, either local or overseas, and been certified its attendance by the related authority can claim double tax deduction on the expenses relating to the lease of space, construction, freight, insurance and logistics of goods and equipment used in such trade exhibition. This measure shall be effective for the expenses incurred on and from the date of law enactment until 31 December 2011.
2. The company or registered partnership spending money on the seminars in the country for its employees by either buying the packages tour from the registered tour operators or arranging the seminar by itself can claim double tax deduction on the expenses for the seminar room, accommodation, transportation, food and other related expenses. This measure shall be effective for two fiscal years (i.e. the current fiscal year and the next fiscal year) for the expenses incurred on or after 1 January 2010.
3. The company or registered partnership which is an operator in tourism industry and has investment expenses on renovating or buying the office's equipments and furniture can claim the 60 percent of tax deduction for the depreciation of such assets on the date of assets acquisition. This measure shall be effective on and from the date of law enactment until 31 December 2011.
4. The car-rental business' operators can claim the 100 percent of tax deduction for the depreciation of the costs of new cars, either passenger cars or commercial vehicles, with no more than 10 seats. The car-rental business' operators can also deduct the rental from letting on hire the passenger cars or commercial vehicles with no more than 10 seats as the expense for tax calculation purpose.
5. The individual who pays for the tour packages to the registered tour operators or the hotel costs in any licensed hotels can claim a tax deduction up to Baht 15,000 against the cost, with effect on and from the date of law enactment until 31 December 2010.

INCREASE OF MINIMUM WAGE RATES ON CERTAIN PROVINCES

According to the minimum wage rates which have been increased since 1 January 2010, the Wage Committee announced the new notification to increase minimum wage rates on three provinces only (i.e. Mae Hong Son, Phetchabun and Uthai Thani) which has been in effect from 10 April 2010. This notification applies to all businesses in these three provinces and the new minimum wage rates shall be as follows:

	Applied Province(s)	Previous Rate of Minimum Wage (Baht / Day) on 1 January 2010	New Rate of Minimum Wage (Baht / Day) from 10 April 2010
1.	Mae Hong Son Province	151	153
2.	Phetchabun Province	155	158
3.	Uthai Thani Province	158	160

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DRAFT BILL ON LAND AND BUILDING TAXES

There is a long effort to create social equality in land ownership and develop unoccupied land to generate income for local administrative organizations rather than the central government. The Cabinet on 20 April 2010 approved in principle on the draft Bill on Land and Building Taxes (“LBT”) as proposed by the Ministry of Finance. Such draft will be then scrutinized by the Council of State before forwarding to the Parliament for deliberation and the public hearing will be simultaneously held for tax rates, exemptions, details and related issues. It is expected to take approximately two years to pass through the parliament and then the law would be enforced two years later. The government would later set up the Land Bank to further purchase the land for providing to the poor in order to create the equitable society.

The draft LBT would replace two existing laws (i.e. the Building Tax Act and the Local Administration Tax Act) which have many problems in enforcement.

According to the approval of draft LBT in principle, there are tax exemptions for farmers and home-owners under the following qualifications:

- Farmers who own land and cultivate in their own land;
- Home-owners who own a small plot of land (not exceeding 50 square wah) with the value of not exceeding (i) Baht 1 Million in Bangkok Metropolis, Head of Provinces and Tourist Attraction Areas (such as Phuket and Pattaya), (ii) Baht 500,000 in Municipality Areas, and (iii) Baht 300,000 in Local Administrative Organizations Areas, respectively.

The exact tax rates under the draft LBT will be set after the law is passed; however, the initial draft LBT sets the ceiling on the tax rates for three types of lands as follows:

- 0.05 percent for Farmland;
- 0.1 percent for Residential Land which is not for commercial purpose; and
- 0.5 percent for others, including Commercial Land, Unused Land.

The scheme for collecting taxes would be made step by step as follows:

- 25 percent of the full rates for the first year;
- 50 percent of the full rates for the second year; and
- Full rates for the third year and thereafter.

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